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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/719,067	08/16/2001	David B. Weiner	UPN-3695	4038

34136 7590 10/29/2003

COZEN O'CONNOR, P.C.  
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PHILADELPHIA, PA 19103-3508

EXAMINER
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SHUKLA, RAM R

ART UNIT	PAPER NUMBER
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1632

DATE MAILED: 10/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/719,067

Applicant(s)

WEINER ET AL.

Examiner

Ram R. Shukla

Art Unit

1632

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.Claim(s) objected to: None.Claim(s) rejected: 1, 2 and 5-31.Claim(s) withdrawn from consideration: None.

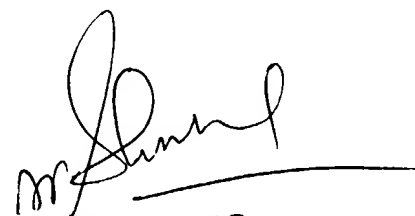
8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
RAM R. SHUKLA, PH.D.  
PRIMARY EXAMINER

Ram R. Shukla, Ph.D.  
Primary Examiner  
Art Unit: 1632

Regarding the rejection of claims 1, 2 and 5-8, it is noted that the amendment of claims by inserting the limitation "wherein the DNA molecule is a plasmid" does not obviate the rejection because Malik et al does teach plasmids that comprise macrophage cell specific promoter driving the expression of a nucleic acid encoding a protein of interest and they showed that the plasmid vector produced expression of the sequence of interest in a macrophage cell line. Regarding the issue of motivation to use a plasmid for expressing a sequence of interest in a macrophage cell, at the time of the invention it was routine in the art to directly inject a plasmid DNA comprising a sequence of interest in a cell, such as a muscle cell for producing a protein of interest. Therefore, it was known in the art to use plasmids for in vivo gene expression and given the teaching of the usefulness of macrophage specific promoters in the cited arts, it would have been obvious to use a plasmid for delivering a protein of interest in a macrophage cell.

Regarding the enablement rejection, the applicants reiterated their previous arguments and did not provide any new evidence. There is no evidence in the specification in the art of record or in the specification that for delivery of a DNA of interest to a lymph node of an individual it was routine to deliver the DNA to any site distal to the lymph node in the body of the individual. Accordingly, the rejections of the record are maintained for reasons of record set forth in the previous office action of 8-8-03.



**RAM R. SHUKLA, PH.D.**  
**PRIMARY EXAMINER**